

Memorandum

To: City Attorney Valerie Armento

CC: City Council Members
City Manager Robert LaSala

From: Tim Risch, Vice Mayor, City of Sunnyvale

Date: September 11, 2003

Re: Downtown Issues and Questions

On or about August 31, 2003 and September 1, 2003, I was contacted by management representatives of the Forum nightclub regarding enforcement activities being conducted in the downtown area by our Public Safety Department on the evening of August 31 and September 1 2003. These conversations led to the formation of a number of questions regarding the incidents that transpired on the night of August 31, and the morning of September 1, 2003 as summarized in the attached letter to City Manager Robert LaSala. At my request, City Manager Robert LaSala transmitted these questions to the Director of Public Safety Ernie Bakin who then promised to provide answers back to the City Manager and me.

Subsequent to this, Steve Fisk, representing the Sunnyvale Public Safety Officers Association (PSOA) transmitted to Public Safety Director Ernie Bakin the attached letter dated September 7, 2003 raising a number of issues, including:

1. Whether the process of providing answers to my questions in the attached letter related to the general performance of the Department of Public Safety on the night of August 31, and the morning of September 1, 2003 and directed through the City Manager to the Director of Public Safety constitutes an "investigation" as it relates to peace officer performance and the provisions of the Peace Officer's Bill of Rights.
2. Whether the process of interviewing officers by their superiors in an attempt to ascertain facts related to the general performance of our Public Safety Department as summarized in the questions in the attached letter violates the provisions of the Peace Officer's Bill of Rights.
3. Whether it is improper for the City Manager, acting at my request for information, to be involved in the process of providing answers to the questions in the attached letter.

I would appreciate your analysis of these items and request a response prior to the scheduled Sunnyvale City Council meeting of September 16, 2003.

If you require further information on this item, please let me know.

**Tim Risch
Vice Mayor
City of Sunnyvale**

Robert LaSala
City Manager
City of Sunnyvale

Bob:

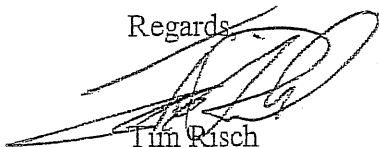
I am in receipt of the downtown Public Safety report for the nights of Friday, August 29, Saturday, August 30, and Sunday, August 31 (attached). Based on this report, I have been investigating the incidents reported and have held several discussions with the management of the Forum nightclub. This has led to a number of questions and asserted inaccuracies in the reports for the events that transpired during the evening of Sunday, August 31. In keeping with a commitment to assure high quality public safety services in the community, I would like clarification and further information on the following points:

1. The report indicates multiple 911 calls were received. Exactly how many 911 calls were received? When were these calls received? What was the nature of the calls?
2. The report indicates the 911 calls reported a "melee," however, when "officers arrived most of the combatants fled." How many officers responded to this call? What exactly did officers observe? How many people were detained, cited, or arrested and what were the ages of the subjects? Where did this alleged "melee" occur? How was a connection made between this event and the business being conducted by the Forum nightclub?
3. Why was it necessary to close Murphy Street? According to witnesses that I talked to, the only reason Murphy was "clogged" was due to Public Safety vehicles.
4. According to the report I received from you orally on the morning September 1, 2003 you indicated that officers only requested, as one option, that the Forum close early. However, all levels of the Forum management are consistent with the statement that Public Safety Officers ordered, not requested, the Forum closed 30 minutes early (no option). I request that you reconcile this discrepancy.
5. Why was the Forum the only establishment asked or required to close early on Murphy Street when there were large crowds in other businesses and nightclubs?
6. What was the rationale for letting 400 juveniles out onto the street 30 minutes early when as the report indicates, problems occurred presumably outside on Murphy Street and not in the Forum? Would this not have exacerbated any problems on the street rather than helping to solve them?
7. What was it necessary to deploy 9 squad cars, 2 paddy wagons, and 1 canine unit to control the crowd at the Forum? Why was it necessary for officers to have displayed pepper ball guns to the young crowd of 14 to 17 year olds as they were leaving the Forum? Was this the best use of Public Safety resources in our City given that it was a holiday weekend night and clearly these officers could have been out patrolling the streets during this time?

8. Why does the report indicate that this was a "potentially volatile situation?" What factors specifically related to the operation of the Forum nightclub suggest that the situation was "potentially volatile"?
9. Management of the Forum nightclub received many comments regarding the increased police presence, however most if not all could not be characterized as being "grateful" for the enhanced police activity. Most reported being confused and unclear as to why such a deployment was needed. Also, I understand many of the surrounding bar owners reported that their patrons were afraid to leave their businesses during this time. Exactly what particular information and how many comments from people led to the conclusion that the "Parents, bar patrons, and bar owners were grateful" for the enhanced police presence?

Finally, I request that I be allowed to listen to recordings of the dispatch operations from the time of 11:00 pm on Sunday August 31 to 12:30 am on Monday September 1 to more fully understand this situation.

Regards,



Tim Risch

Vice Mayor, City of Sunnyvale

DPS Downtown Report

August 29, 30 & 31, 2003

Friday, August 29

Downtown had a minimal crowd that caused no problems.

Saturday, August 30

Downtown had a smaller than usual Saturday crowd. Even though The Forum has some show by a HipHop/Reggae (?) singer. No problems.

Sunday, August 31

Large 14-17 year old crowd downtown. Near closing time, dispatch received multiple 911 calls of a melee downtown. When officers arrived most of the combatants fled. Several panicked parents were running around trying to pick up their kids. Murphy St. was clogged in both directions. In an effort to gain control, officers closed Murphy St. and had the Forum close 20 minutes early. All of the juveniles were directed to Washington and Murphy for parent pick-up. This worked well, allowing parents easy an access pick up spot. It allowed officers to control the crowd in one location without having them wander around looking for or causing problems. Parents, bar patrons, and bar owners were grateful. Control was gained quickly and a potential volatile situation was extinguished. This is the last 14-17 year old night until October.

PUBLIC SAFETY OFFICERS' ASSOCIATION

P.O. Box 60372
Sunnyvale, California 94088

7 September 2003

Irwin Bakin, Director
City of Sunnyvale, Department of Public Safety
700 All America Way.
Sunnyvale, CA 94088-3707

Chief Bakin,

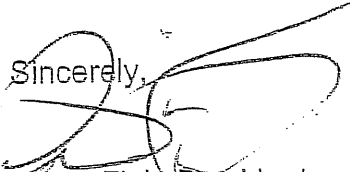
I have reviewed a memo from you with a series of questions referencing the "Incident on Murphy Ave. 9/1/03". In this document you asked Captain Fortin to respond to you with a written report by 9/11/03. It is my understanding that at least one of members of the Public Safety Officers Association, Shawn Ahearn, was interviewed by Captain Fortin in an effort to address the questions contained in that memo. Shawn was interviewed because he was one of the supervisors on scene at that event.

It is obvious from the tenor of these questions that the actions of Lt. Shawn Ahearn and the other officers present that evening are the subject of an investigation. The questions point directly to actions by our officers that could lead to discipline. This interview was conducted in a manner in violation of the Peace Officer's Bill of Rights.

I am protesting the involvement of the City Manager in submitting questions which are part of an internal investigation. It is inappropriate for the City Manager to be so involved in such investigations.

Additionally, this Association would like to know Councilmember Risch's involvement in instigating this investigation or developing these questions. Our questions are relevant since we have confirmed Mr. Risch's stepdaughter works at the Forum and on this and other occasion, the stepdaughter called Councilmember Risch from the Forum. In one case, resulting in a call from you to the supervising officer on site within minutes of her call.

Sincerely,


Steve Fisk, President

CC: Ron Yank, Attorney
Carroll, Burdick, & McDonough, LLP